

June 12, 2002

SKOWHEGAN ONLINE, INC.
Rapid Response Process Complaint
Skowhegan OnLine, Inc. v. Verizon

DECISION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. BACKGROUND

A. Description of the Issue

On December 27, 2001, Skowhegan OnLine Inc. (SOL) began exploring the possibility of ordering UNE loops from Verizon which would be terminated at a pole-mounted network interface device (NID) or a SOL-owned remote terminal (RT) box. This request was made for the purpose of allowing SOL to extend its DSL service to customers who are too far from Verizon's Skowhegan switch to be served by traditional DSL methods. Termination of UNE loops at poles or remote terminal boxes would allow SOL to transport its service closer to the end user customer. From the pole or RT box SOL would overbuild short sections of distribution facilities and thus reach customers who would otherwise be reachable with DSL only by a complete overbuild of the cable facility all the way from the SOL collocation site in Verizon's Central Office.

SOL acknowledges that UNE loop termination of this type would be expected by SOL only at locations where Verizon would be required to place UNE loops normally, given the standard technical and availability limitations of UNE loops.

On March 28, 2002, SOL received a notice from Verizon rejecting its request for termination of the loop at a pole or RT. SOL and its account managers then escalated the request through the proper Verizon channels but continued to have the request rejected.

B. RRP History

SOL filed its complaint with the Public Utilities Commission's Rapid Response Process Team (RRPT) on May 16, 2002, seeking the ability to order UNE loops from Verizon that would be terminated at a pole mounted NID or an SOL-owned remote terminal box.

A preliminary telephone conference was held on May 20, 2002. Participants included members of the PUC RRPT, Verizon, and SOL. At the conference, the parties were given an opportunity to ask preliminary questions to clarify

the complaint and a schedule for the case was established. The RRPT followed up the teleconference by issuing written discovery questions.

On May 24, 2002, Verizon responded to SOL's complaint and the RRPT's discovery questions. Verizon stated that it could not accommodate SOL's request because unbundled loops must terminate at a customer's premise and that SOL's pole or pad for placement of a NID does not qualify as a customer premise. Specifically, Verizon argued, "the term 'customer' is a defined term in the [SOL] Interconnection Agreement (see Glossary at section 2.25) and refers to a third party residence or business end user of telecommunications service (either Verizon's service, or SOL's)," and that "[p]remises is also a defined term in telecommunications and means 'a dwelling unit, other building, or a legal unit of real property such as a lot on which the customer's dwelling unit is located, as determined by the [Verizon] Telephone Company.'"¹ (Verizon Response of 5/24/02 at 5.) Finally, Verizon argued that "[n]o state commission has required Verizon to configure an unbundled loop as SOL requests and Verizon has not offered to do so in any Verizon jurisdiction." (Id. at 6).

Verizon offered SOL alternate arrangements to replace the need to order UNEs as SOL requested, namely subloop unbundling, but SOL rejected the alternatives because they were uneconomical. SOL contends Verizon's DSL systems in the Skowhegan exchange have not been well designed, and that they do not serve enough customers to make it economical for SOL to serve its prospective DSL customers through subloop unbundling from a Verizon remote terminal. On May 28, 2002, SOL responded to Verizon's May 24th document to address what SOL believed were factual errors in Verizon's statements. SOL believes that Verizon mischaracterized what it was requesting as subloops and SOL disagreed with Verizon's interpretation of the FCC's requirements for placement of the NID. SOL also disputed Verizon's assertion that the arrangement that SOL requested would require Verizon to "construct facilities" which SOL acknowledges Verizon is not required to do.

On May 29, 2002 a second conference call was held by the RRPT which was attended by Verizon, SOL and the RRPT. The RRPT propounded clarifying questions to Verizon and SOL, and, after receiving answers to its questions and hearing additional comments from the parties, the RRPT stated its preliminary conclusion that SOL's request, while novel and potentially useful in the provision of broadband capability to additional customers, should be denied because it did not fit the definition of a UNE loop under the terms of the interconnection agreement between Verizon and SOL. This Order provides the details behind that decision.

II. DECISION

The RRPT agrees with Verizon that SOL is not seeking a UNE loop as that term is defined in the interconnection agreement between the two parties. Per that agreement, a UNE loop must terminate at a NID on a third-party customer's premises;

¹See Tariff P.U.C. Me. 15, Section 1.1.6 (at page 11). SOL's Interconnection Agreement specifies at Glossary Section 1.1 that terms used in a tariff shall have the meaning stated in the tariff.

the NID must be on or reasonably close to the physical location of the customer. The “loops” that SOL seeks would be terminated at pole-mounted NIDs or at NIDs located at enclosures or buildings containing SOL remote terminals, not at the locations of end user customers. End user customers cannot purchase UNEs and CLECs cannot be considered end users because they are wholesale customers.

SOL (as a CLEC) wants to obtain a type of transport facility from its collocation space at Verizon’s central office to SOL RTs that would be located at various points in Verizon’s distribution network. (SOL also is an ISP, but ISPs are end users and cannot purchase UNEs; presumably Verizon might terminate a retail business line at almost any demarcation point sought by SOL the ISP.) SOL wants to build loops from its RTs to its end user customers in order to provide DSL service to those customers.²

Accordingly, it appears that SOL is requesting a piece of Verizon’s network that has not yet been defined as an unbundled network element (UNE). Any decision adding to the list of the UNEs would need to come from the full Commission and not the RRPT because such a decision would represent a significant policy change. Thus, we rest our RRPT decision on an interpretation of the Verizon/SOL interconnection agreement and make no finding regarding other arguments made by Verizon and SOL concerning the technical feasibility and legal support of requiring Verizon to provision the service requested by SOL.

While the RRT believes the facts presented in SOL’s RRP request require a decision in Verizon’s favor, it appears that public policy goals, namely continued and wider deployment of broadband, warrant additional investigation into this matter. SOL’s proposal holds the possibility of extending broadband capabilities to more citizens by overcoming the distance limitations that currently exist for DSL service. This is critically important, especially if SOL’s allegations that Verizon’s loop plant has been mis-designed and limits the availability of DSL to rural customers are true. Thus, the RRPT will recommend that Commission open an investigation into SOL’s proposal.

Dated at Augusta, Maine, this 12th day of June, 2002.

BY ORDER OF THE RAPID RESPONSE PROCESS TEAM

Trina Bragdon
Douglas Cowie
Richard Kania
Amy Spelke

²Verizon has suggested SOL purchase ‘subloops.’ There are two subloops: SOL could take service at a point in the Feeder portion of the loop network, or at a point in the Distribution portion, namely at a Remote Terminal. SOL contends these subloops are too far from the customers he’s trying to provide DSL service to, and therefore are not economical options.

